

STATE OF CALIFORNIA-GAVIN NEWSOM,,-Governor

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

October 14, 2022 _____ Agenda ID #21042

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ 423:

~~This is the draft Resolution of Administrative Law Judge (ALJ) Amin Nojan resolving K.22-02-004. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.~~

~~When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.~~

~~You may serve comments on the draft resolution. Comments shall be served (but not filed) within 20 days of the date that the draft Resolution was mailed and published on the Commission's website [link], as provided in Rule 14.5 of the Commission's Rules of Practice and Procedure. Comments shall be served upon all persons on this proceeding's service list and on Assistant Chief ALJ MacDonald at KK3@cpuc.ca.gov.~~

/s/ MICHELLE COOKE _____

Michelle Cooke

Acting Chief Administrative Law Judge

MLC:sgu

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-423
Administrative Law Judge Division
[Date]

RESOLUTION

RESOLUTION ALJ-423. Resolves K.22-02-004, the Appeal of Citation No. T.22-01-008 in the amount of \$4,000 issued on January 13, 2022, by the Consumer Protection and Enforcement Division.

SUMMARY

This resolution resolves K.22-02-004, the appeal of Citation No. T.22-01-008 issued to Earl McLeod by the Consumer Protection and Enforcement Division of the California Public Utilities Commission (Commission) on January 13, 2022. Citation No. T.22-01-008 issues a fine of \$4,000 for four violations of the Public Utilities Code and Commission General Order 157-E.

The citation is sustained. The full amount of the penalty is due.

BACKGROUND

The California Public Utilities Commission (Commission) holds broad authority to regulate charter party carriers pursuant to the Passenger Charter-party Carriers' Act (Public Utilities Code § 5351, et seq.) The Consumer Protection and Enforcement Division (CPED) is authorized to issue citations to various classes of transportation carriers for violation of the Public Utilities Code and/or Commission Orders, pursuant to Resolution ALJ-187. Carriers issued such citations may then accept the fine or contest it by way of an appeal under Resolution ALJ-377.

On December 18, 2021, CPED Transportation Enforcement Branch (TEB) Investigator Nera and St. Helena Police Officer R. Stephenson observed the vehicle of Earl McLeod (Mr. McLeod) bearing CA license plate number 18407H1 in St. Helena.¹ During the

¹ CPED Compliance filing.

compliance stop, Investigator Nera requested the vehicle registration and Mr. McLeod provided vehicle registration that had expired on March 31, 2018. The license plate on the back of the vehicle, however, had tags indicating the vehicle was registered through March 2020. The vehicle was then impounded by Officer Stephenson, at Investigator Nera's request, for operating without valid authority.

An investigation, assigned to Investigator Johnson on January 4, 2022, found several violations of the Public Utilities Code and Commission General Order (GO) 157-E. The investigation yielded the following violations:

1. Mr. McLeod operated as a charter-party carrier without operating authority in violation of Public Utilities (Pub. Util.) Code § 5371. [1 count]
2. Mr. McLeod operated a bus without proper vehicle registration in violation of Pub. Util. Code § 5387(c)(1)(F) and California Vehicle (Cal. Veh.) Code § 22651. [1 count]
3. Mr. McLeod operated a bus without California Highway Patrol (CHP) inspection in violation of Pub. Util. Code § 5381, GO 157-E and Cal. Veh. Code §§ 34501(c) and 34501(e). [1 count]
4. Mr. McLeod engaged a driver who did not possess the proper California driver's license endorsement to drive larger vehicles in violation of Pub. Util. Code §§ 5381, 5387(b), 5387(c)(1), and 5387(E), GO 157-E, Part 5.01 and Cal. Veh. Code §§ 12500(d), 15250, 15272 and 15278(a)(2). [1 count]

On January 13, 2022, CPED issued Citation Number T.22-01-008 for four violations of the Public Utilities Code and GO 157-E. Mr. McLeod timely appealed the citation pursuant to Resolution ALJ-377 and moved for the \$4,000 fine to be reduced or completely dismissed. In the Notice of Appeal, Mr. McLeod contends that the vehicle was a private vehicle for personal use and that the occupants in the vehicle were family. Mr. McLeod further asserts that no payment, trade, or service was made to him for use of the vehicle at any time, including on the date of the citation. Mr. McLeod argues that he was unaware he needed to possess a specific driver's license to operate the vehicle as he was allowed to drive it from the auction where it was purchased, where it was also specified that the vehicle would be purchased only for private use.

To support his assertions, Mr. McLeod filed attachments including updated registration beginning January 25, 2022, for commercial vehicle use, and a Certificate of Insurance.

CPED timely filed a Compliance Filing regarding Mr. McLeod's appeal on February 28, 2022. In support of its charges, CPED's compliance filing included the following:²

Exhibit 1	Case Summary
Attachment 1:	Photo of BUS LIC# 18407H1
Attachment 2:	Request for Impound
Attachment 3:	Photo of Vehicle Registration
Attachment 4:	Photo of LIC# 18407H1 Tags Expiration March 2021
Attachment 5:	TLAB CHP Inspection Form
Attachment 6:	Driver's Driver License Information

CPED also filed Additional Photo of BUS LIC# 18407H1-Passengers.

RESOLUTION OF THE APPEAL

An Evidentiary Hearing was held by the Commission on May 2, 2022. Both parties were present for the hearing. Mr. McLeod was cooperative and forthcoming at the hearing.

Pursuant to Resolution ALJ-377, CPED has the burden of proving, by a preponderance of the evidence, that the penalty was just and reasonable, and the citation was issued in compliance with the law and Commission rules. The burden then shifts to the Appellant to prove that a violation did not occur, or the amount of the penalty is inappropriate, by a preponderance of the evidence.

CPED provided evidence at the hearing in support of its position that the citation was properly issued and that the amount of the fine is reasonable. CPED met its burden of proof. At the hearing, Mr. McLeod did not dispute the violations.

Pub. Util. Code § 5371 requires that "[n]o charter-party carrier of passengers ... shall engage in transportation services made subject to this chapter without first having obtained from the commission a certificate that public convenience and necessity require the operation." CPED showed that Mr. McLeod never held such authority.

Pub. Util. Code § 5387 establishes acts resulting in the impounding of a bus. At the time of the citation, Mr. McLeod did not hold the required driver's license for the class of vehicle and as a result violated Pub. Util. Code § 5387(b). Mr. McLeod engaged a driver who did not possess the proper authority, in violation of Pub. Util. Code § 5387(c)(1)(E), when one knowingly employs a person who does not have a current and valid license, endorsement, or certificate.

² The Compliance Filing consisted of Exhibit 1. Exhibit 1 had 6 Attachments.

Further, Mr. McLeod also violated Pub. Util. Code § 5387(c)(1)(F) by failing to be properly registered with the Department of Motor Vehicles (DMV). Cal. Veh. Code § 22651 sets forth that removal of a vehicle is permitted when the registration is expired for more than six months from when the vehicle is observed. Mr. McLeod's vehicle registration had expired approximately 3 years 8 months prior to December 18, 2021.³

Pub. Util. Code § 5381 establishes the Commission's broad regulatory authority over any charter-party carrier of passengers.⁴ GO 157-E, Part 4.02 requires the vehicles of charter-party carriers to be inspected by the CHP, and for proper documentation of inspections to be maintained by the carrier. CPED records show that there was no record that Mr. McLeod obtained the required vehicle inspection by the CHP.⁵

GO 157-E, Part 5.01 establishes that "every driver of a charter-party vehicle shall be licensed as required under the California Vehicle Code and shall comply with the driver provisions of the Motor Carrier Safety Sections of Title 13 of the California Code of Regulations." Further, Cal. Veh. Code §§ 12500(d), 15250 and 15272 set forth that a driver may not operate a vehicle for which they do not hold the proper license.⁶ Cal. Veh. Code § 15278(a)(2) requires the driver of a bus to obtain an endorsement issued by the DMV to operate a bus as a commercial motor vehicle.⁷ According to Cal. Veh. Code § 233, a bus is defined as seating more than ten persons, including the driver, and weighing less than 26,001 pounds.⁸ CPED records show that Mr. McLeod's vehicle is a bus with a seating capacity of 27, which is subject to CHP inspection. Mr. McLeod failed to obtain the proper authority to operate the class of vehicle he was driving.

ASSESSMENT OF THE FINE

In assessing the reasonableness of the \$4,000 fine, several factors must be considered. Decision (D.) 98-12-075 sets forth criteria for determining the reasonableness of a fine. The factors to consider in assessing the reasonableness of a fine include: (1) the severity of the economic or physical harm resulting from the violation; (2) the conduct to prevent, detect, disclose, and rectify the violation; (3) the financial resources of the party

³ The vehicle registration expired on March 31, 2018.

⁴ Cal. Pub. Util. Code § 5381.

⁵ Cal. Veh. Code §§ 34501(c) and 34501(e) establish the required procedure for inspections of bus operation, and that it is unlawful and a misdemeanor to operate a bus without the required inspections.

⁶ Cal. Veh. Code §§ 12500(d), 15250 and 15272.

⁷ Cal. Veh. Code §15278(a)(2).

⁸ Cal. Veh. Code § 233.

involved; (4) the public interest involved; (5) the totality of the circumstances; and (6) Commission precedents.

As set forth in D.98-12-075, the Commission should evaluate the reasonableness of the \$4,000 fine amount. With respect to the public interest, the Commission notes that safety of the public is paramount. Using these criteria, we find that the amount of the penalty balances the fact that although there was no immediate economic or physical harm to the public because of the violations, the applicant failed to meet regulatory requirements specifically set to protect public safety. As a result, we find that the fine of \$4,000 is reasonable.

At the hearing, Mr. McLeod did not deny or contest the violations. The penalty of \$4,000 will be sustained. ~~Mr. McLeod has the option to pay the amount in full or pay through a 12-month payment plan.~~

COMMENTS

According to Pub. Util. Code § 311(g)(1), a draft resolution must be served upon all parties and be subject to a public review and comment period of at least 30 days prior to a vote of the Commission on the resolution. A draft of today's resolution was distributed for comment to the service list. No comments were received.

FINDINGS

1. On December 18, 2021, Investigator Nera and Officer R. Stephenson observed Mr. McLeod's vehicle bearing CA license plate number 18407H1 in St. Helena.
2. On December 18, 2021, the St. Helena Police Department impounded the vehicle for operating without a valid authority.
3. On January 13, 2022, CPED issued Citation No. T.22-01-008 to Mr. McLeod.
4. The Citation, a fine of \$4,000, is for the following violations:
 - a. Mr. McLeod operated as a charter-party carrier without operating authority in violation of Pub. Util. Code § 5371. [1 count]
 - b. Mr. McLeod operated a bus without proper vehicle registration in violation of Pub. Util. Code § 5387(c)(F) and Cal. Veh. Code § 22651. [1 count]
 - c. Mr. McLeod operated a bus without California Highway Patrol (CHP) inspection in violation of Pub. Util. Code § 5381, GO 157-E and Cal. Veh. Code §§ 34501(c) and 34501(e). [1 count]

- d. Mr. McLeod engaged a driver who did not possess the proper California driver's license endorsement to drive larger vehicles in violation of Pub. Util. Code §§ 5381, 5387(b), 5387(c)(1), and 5387(E), GO 157-E, Part 5.01, and Cal. Veh. Code §§ 12500(d), 15250, 15272 and 15278(a)(2). [1 count]
5. On January 26, 2022, Mr. McLeod filed an appeal of Citation No. T.22-01-008.
6. On February 28, 2022, CPED submitted a Compliance Filing, which detailed the findings of CPED's investigation into the events of December 18, 2021.
7. Mr. McLeod did not obtain a certificate that public convenience and necessity require the operation of the vehicle.
8. Mr. McLeod did not hold the required driver's license for the class of vehicle he operated.
9. Mr. McLeod engaged a driver who did not possess proper authority to operate the vehicle.
10. Mr. McLeod's vehicle registration was expired at the time of the vehicle removal by the St. Helena Police Department.
11. There is no record of Mr. McLeod obtaining the required inspection by CHP for the class of vehicle he operated.

Therefore, **IT IS ORDERED** that:

1. The \$4,000 penalty is sustained.
2. The amount of the penalty that is immediately due and payable is \$4,000. Mr. McLeod must pay the penalty of \$4,000 by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, San Francisco, California 94102. Mr. McLeod must write on the face of the check or money order, "For deposit to the General Fund pursuant to Resolution ALJ-423."
3. K.22-02-004 is closed.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorably thereon:

Rachael Petersen
Executive Director

ALJ/AN4/sgu

~~BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA~~

~~RESOLUTION ALJ-423. Resolves K.22-02-004, the Appeal of Citation No. T.22-01-008 in the amount of \$4,000 issued on January 13, 2022, by the Consumer Protection and Enforcement Division.~~

~~INFORMATION REGARDING SERVICE~~

~~I have electronically served all persons on the attached official service list who have provided an e-mail address for K.22-02-004.~~

~~Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served by U.S. mail on all parties listed in the "Party" category of the official service list for whom no e-mail address is provided.~~

~~Dated October 14, 2022, at San Francisco, California.~~

~~/s/ SHANE GUTTO~~

~~Shane Gutto~~

~~**N O T I C E**~~

~~Persons should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.~~

~~*****~~

~~The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.~~

~~If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event~~

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Last Updated on 14-OCT-2022 by: AMT
K2202004 LIST

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